

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSE LOPEZ GARCIA,

Petitioner,

vs.

STATE OF NEVADA, *et al.*,

Respondents.

3:10-cv-00140-LRH-RAM

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner. Petitioner has paid the filing fee for this action. (Docket #4). The petition shall now be filed and served on respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. *See* 28 U.S.C. §2254(b) (successive petitions).

Petitioner has filed a motion for the appointment of counsel. (Docket #1-3). There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert. denied*, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the

1 case are such that denial of counsel would amount to a denial of due process, and where the
2 petitioner is a person of such limited education as to be incapable of fairly presenting his claims. *See*
3 *Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970).

4 The petition on file in this action is well-written and sufficiently clear in presenting the issues
5 that petitioner wishes to bring. The issues in this case are not complex. It does not appear that
6 counsel is justified in this instance. The motion shall be denied.

7 **IT IS THEREFORE ORDERED** that the Clerk shall **FILE and ELECTRONICALLY**
8 **SERVE** the petition upon the respondents.

9 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from entry of
10 this order within which to answer, or otherwise respond to, the petition. In their answer or other
11 response, respondents shall address any claims presented by petitioner in his petition. Respondents
12 shall raise all potential affirmative defenses in the initial responsive pleading, including lack of
13 exhaustion and procedural default. **Successive motions to dismiss will not be entertained.** If an
14 answer is filed, respondents shall comply with the requirements of Rule 5 of the Rules Governing
15 Proceedings in the United States District Courts under 28 U.S.C. §2254. If an answer is filed,
16 petitioner shall have **forty-five (45) days** from the date of service of the answer to file a reply.

17 **IT IS FURTHER ORDERED** that, henceforth, petitioner shall serve upon the Attorney
18 General of the State of Nevada a copy of every pleading, motion, or other document he submits for
19 consideration by the Court. Petitioner shall include with the original paper submitted for filing a
20 certificate stating the date that a true and correct copy of the document was mailed to the Attorney
21 General. The Court may disregard any paper that does not include a certificate of service. After
22 respondents appear in this action, petitioner shall make such service upon the particular Deputy
23 Attorney General assigned to the case.

24 ///

25 ///

1 **IT IS FURTHER ORDERED** that petitioner's motion for the appointment of counsel
2 (Docket #1-3) is **DENIED**.

3 DATED this 23rd day of April, 2010.

A handwritten signature in blue ink, appearing to read "L. Hicks", is positioned above the printed name of the judge.

6
7 _____
LARRY R. HICKS
UNITED STATES DISTRICT JUDGE